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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
20 October 1948

UNITED STATES OF AMERICA VS KIICHI YAMAZAKI
UNITED STATES OF AMERICA VS SHUICHI SHINODA
UNITED STATES OF AMERICA VS MASAJIRO HIRABAYASHI

Review of the Staff Judge Advocate

1. The attached record of trial of Kiichi Yamazaki, Shuichi Shinoda, Masajiro Hirabayashi at Yokohama, Japan, from 20 February 1948 to 26 February 1948, by a Military Commission appointed by paragraph 17, Special Orders No. 39, Headquarters Eighth Army, United States Army, dated 18 February 1948, having been referred to the Staff Judge Advocate, this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kiichi Yamazaki
AGE: 27
RESIDENCE: 904 Banchi, Sutou-Bori Shinden Oaza, Kita Monma-Mura, Kitasoma-Gun, Ibaraki Prefecture
MARITAL STATUS: Single
RELATIVES: Father, mother, 2 brothers, 2 sisters
EDUCATION: Elementary school
VOCATION: Farming
MILITARY CAREER: Inducted into Japanese Navy 1 September 1943 - Discharged 30 August 1945

DATE OF CONFINEMENT: 17 September 1946
DATE OF ARRAIGNMENT: 20 February 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 20 February 1948 to 26 February 1948
DATE OF SENTENCE: 26 February 1948
SENTENCE: CHL for six years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Shuichi Shinoda
AGE: 35
RESIDENCE: 396 Shimona Kamura Nakamura, Ashigarashimo-Gun, Kanagawa Prefecture
MARITAL STATUS: Married
RELATIVES: 1 Brother
EDUCATION: Higher Elementary School
VOCATION: Salesman (Food Store). Also employed in automobile factory.
MILITARY CAREER: Inducted into Japanese Navy 10 January 1935 - Discharged 25 August 1945.

DATE OF CONFINEMENT: 16 September 1946
DATE OF ARRAIGNMENT: 20 February 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 20 February 1948 to 26 February 1948
DATE OF SENTENCE: 26 February 1948
SENTENCE: CHL for two years
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Masajiro Hirabayashi
AGE: 28
RESIDENCE: 154 Chofu, Unoki-machi, Ota-ku, Tokyo
MARITAL STATUS: Single
RELATIVES: Father and Mother
EDUCATION: Graduated Elementary School
VOCATION: Type Setter
MILITARY CAREER: Inducted into Japanese Navy 10 January 1940 - Discharged 30 November 1945

DATE OF CONFINEMENT: 6 August 1946
DATE OF ARRAIGNMENT: 20 February 1948
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 20 February 1948 to 26 February 1948
DATE OF SENTENCE: 26 February 1948
SENTENCE: CHL for four years
CLEMENCY RECOMMENDED BY COMMISSION: No

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2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charges and Specifications:	Pleas	Findings	Legally Sustained
YAMAZAKI			
Charge: Accused, at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes, except as modified below.
Sp 1: Between about 1 July 1944 and 31 September 1944, at Ofuna Prisoner of War Camp, Ofuna, Honshu, Japan, the accused did willfully and unlawfully mistreat, torture, and abuse Gregory Boyington, an American prisoner of war, by beating him with fists and a club and forcing him to stand at attention for a long period of time.	NG	G	Yes, except the words "31 September 1944", substituting therefor the words "30 September 1944". Of the excepted words, Not Guilty; of the substituted words, Guilty.
Sp 2. Between 1 January 1944 and 10 July 1944, the accused did willfully and unlawfully mistreat, torture and abuse K. O. Kalberg, an American prisoner of war, by forcing him into an unnatural, painful position and beating him with a club and fists.	NG	G	Yes
Sp 3: Between 1 January 1944 and 10 July 1944, the accused did willfully and unlawfully mistreat and abuse Paul D. Jones, an American prisoner of war, by forcing him to assume an unnatural, painful position for a long period of time and by beating and otherwise abusing him.	NG	G, except the words "and otherwise abusing"; of the excepted words, Not Guilty	Yes
Sp 4: Between 1 January 1944 and 10 July 1944, the accused did willfully and unlawfully mistreat and abuse one Holman, a sick American prisoner of war, by beating and otherwise abusing him.	NG	G, except the words "and otherwise abusing"; of the excepted words, Not Guilty	Yes
Sp 5: Between 1 January 1944 and 10 July 1944, the accused did willfully and unlawfully mistreat and abuse Noel T. Quinn, an Australian prisoner of war, by beating him.	NG	NG	--
Sp 6: (As amended, R. 3) At divers times between 1 January 1944 and 31 September 1944, the accused did willfully and unlawfully mistreat and torture numerous American and Allied prisoners of war by beating them with fists and clubs, by forcing them to assume unnatural and painful positions for long periods of time, and by otherwise abusing them.	NG	G	Yes, except the words "31 September 1944", substituting therefor the words "30 September 1944". Of the excepted words Not Guilty of the substituted words, Guilty.

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SHINODA

Charge: Accused at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes, except as modified below.
Sp 1: Between about 1 July 1943 and 31 July 1943, at Ofuna Provisional Prisoner of War Camp, Ofuna, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse J. S. Knutson, an American prisoner of war, by beating him with a club.	NG	G	Yes
Sp 2: Between about 1 June 1943 and 31 September 1943, the accused did mistreat, abuse and torture John A. Fitzgerald, G. H. Whiting and K. D. Harty, American prisoners of war, by forcing them to work for a long and excessive period of time without rest and by beating said Harty and said Whiting with a shovel.	NG	G	Yes, except the words "31 September 1943," substituting therefor the words "30 September 1943". Of the excepted words Not Guilty of the substituted words Guilty.
Sp 3: That at divers times between 1 November 1942 and 1 September 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied prisoners of war.	NG	G except the words "at divers times" and the words "mistreat, torture, abuse and beat numerous Allied prisoners of war", substituting therefor the words "beat Lieutenant Carlton H. Clark, an American prisoner of war"; of the excepted words Not Guilty, of the substituted words Guilty.	Yes

HIRABAYASHI

Charge: Accused at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 1 January 1943 and 31 August 1943, at Ofuna Provisional Prisoner of War Camp, Ofuna, Honshu, Japan, the accused did willfully and unlawfully mistreat, torture and abuse John Fitzgerald, G. H. Whiting and K. E. Hardy, American prisoners of war, by forcing them to perform hard labor an excessively long period of time without rest and by striking said Whiting and said Hardy with a shovel.	NG	G except the words "K. E. Hardy and Hardy" substituting therefor the words "K. D. Harty and Harty"; of the excepted words Not Guilty, of the substituted words Guilty.	Yes

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Sp 2: (As amended, R. 3) At divers times between 1 April 1942 and 31 August 1943, the accused did mistreat and torture American and Allied prisoners of war by forcing them to run long distances in inclement weather; by forcing them to perform arduous exercises beyond their endurance and by beating them with a club when they fell exhausted; and by otherwise beating and abusing them.	NG	G	Yes

3. Summary of the Evidence:

Preliminary remarks: All of the alleged offenses took place at Ofuna Prisoner of War Camp, Ofuna, Honshu, Japan. Evidence for the Prosecution consisted of twenty-one (21) exhibits and the testimony of one (1) witness: Captain GODWIN (NZ).

a.) For the Prosecution:

As to Specification 1 (YAMAZAKI): Captain James G. GODWIN (New Zealand), a witness for the Prosecution, testified that he was confined in the Ofuna Provisional Prisoner of War Camp from 29 June 1944 to 15 January 1945 and identified the accused YAMAZAKI as one of the guards also known as "Fatso" and "Swivel Neck". (R. 23). In early July 1944 in the afternoon the prisoners were lined up and BOYINGTON was called out and stood at attention. He was only wearing a "Fundoshi" (Loin Cloth). He was made to stand with his feet apart and his hands over his head. The accused struck him four or five blows across the buttocks with a lump of wood similar to a baseball bat. Then another guard beat him with the same bat. (R. 24). He was stood at attention and a foot circle was drawn for him to stand in. Then we were dismissed. He was standing there after supper (about 5:00 p.m.). I do not know if he had any supper; apparently not. He was beaten for smoking in the lavatory. Deponent did not get the full story from BOYINGTON. (R. 25).

Gregory BOYINGTON, does not recall the exact dates that he witnessed different beatings or was beaten himself, but he witnessed YAMAZAKI (among others) beat Allied prisoners in Ofuna Camp day after day. He was at Ofuna Prisoner of War Camp from 7 March 1944 to 6 April 1945. He holds Capt. SANEMATSU (in charge of the Camp) solely responsible for every atrocity committed there. (Exhibit 1).

James W. CONDIT, was at Ofuna Prisoner of War Camp from 5 September 1943 to 30 September 1944. He identified a photograph as YAMASAKI, also known as "Swivel Neck". He witnessed the beating of Major BOYINGTON administered by YAMASAKI and another guard called "Crummy". They used a small fence post as a bat. This was in June or July 1944. BOYINGTON was caught smoking in the wrong place and as a result he was beaten. (Exhibit 4).

In Exhibit 5, an affidavit by John A. FITZGERALD the deponent stated that he was interned in the Ofuna Camp and that on 12 July 1944 he witnessed YAMAZAKI (also known as "Swivel Neck" and "Liver Lip" catch BOYINGTON smoking in the latrine. YAMAZAKI slugged BOYINGTON several times with his fists. YAMAZAKI had stated that Hirayama told him and OTAKE to hit BOYINGTON. He observed (from a distance of (25) twenty-five feet) YAMAZAKI and OTAKE strike BOYINGTON eight (8) times with a club the size of a ball bat across his buttocks. BOYINGTON was clad only in a "Fendosha" and following the beating was made to stand at attention about one and a half hours. BOYINGTON's legs and buttocks were black and blue for many days. The guards seemed to enjoy the punishment.

In Exhibit 20, deponent stated in part that he was at Ofuna Interrogation Camp from 1 January 1944 to 15 January 1945. On about 1 October 1944 "Fatty" (the accused) beat BOYINGTON before the assembled prisoners of war for

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unauthorized smoking. He lined the prisoners of war up without the approval of his superiors. "Fatty" hit BOYINGTON at least twenty times across the buttocks, leaving him raw, bleeding and bruised.

As to Specification 2 (YAMAZAKI): In Exhibit 3, LYNN R. CLARK stated in part as follows: I was a prisoner of war at Ofuna, from 12 October 1943 to 10 July 1944. YAMAZAKI (nicknamed "Swivel Neck") arrived in Ofuna in January 1944. In one incident, the accused took K. O. KALBERG behind a barrack and hit him several times on the back with a bamboo pole or "Kendo Stick" and forced him into the "Ofuna Crouch". This was not ordered but was YAMAZAKI's idea. The "Ofuna Crouch" is defined in Exhibit 5, Page 3, as follows: "Standing on the ball of your feet, knees half bent and arms extended over the head".

In Exhibit 9, KENNETH O. KALBERG states that he was at Ofuna Prisoner of War Camp from 5 September 1943 to 10 July 1944. About 15 March YAMAZAKI cooked up some reason and made him do knee bends with hands over his head until he fell down. YAMAZAKI then beat him with a "Kendo" stick until stopped by the senior guard. When the guard left, YAMAZAKI continued the beating.

As to Specification 3 (YAMAZAKI): In Exhibit 16, CARL O. QUARTERMAN, USN, stated that he was a prisoner of war at Ofuna from 12 October 1943 to 10 July 1944. He witnessed YAMAZAKI, nicknamed "Fatsuff", make PAUL D. JONES, USAAC, stand in the "Stoop Fall" position until he collapsed, then slugged him in the face for not being able to stay in this very tiresome position longer. This happened about January 1944.

As to Specification 4 (YAMAZAKI): Again in Exhibit 16, QUARTERMAN stated he witnessed YAMAZAKI slug HOLMAN, USAAC, in the face at least fifteen times for not being able to do the required daily exercises. HOLMAN had a bad leg and was practically a cripple at this time. This happened about January 1944.

As to Specification 5 (YAMAZAKI): Not Guilty.

As to Specification 6 (YAMAZAKI): Carl K. CANNON, an American prisoner of war, states that he was at Ofuna from April 1944 to November 1944. About July 1944 a guard nicknamed "Fatso" struck him in the face three or four times with his fist for no reason. "Fatso" was five feet, five inches, stocky and had a cherubic face. He saw "Fatso" slug James CONDIT, an American prisoner of war about June 1944. (Exhibit 2, p 1). He saw "Fatso" beat LEMPRIERE, an Australian prisoner of war, with his fists in August or September 1944. (Exhibit 2, p 2). During the same period almost every prisoner of war was lined up and forced to file by one of the guards who struck each prisoner with a baseball bat once or twice across the buttocks. "Fatso" participated in the beating (Exhibit 2, p 3).

LYNN R. CLARK, an American prisoner of war at Ofuna from 12 October 1943 to 10 July 1944, states that YAMAZAKI arrived at Ofuna in January 1944. He hit, slugged and forced several people into different punishment positions during his stay at Ofuna. (Exhibit 3, p 2)

J. A. FITZGERALD, an American prisoner at Ofuna from 1 May 1943 to 15 January 1945, stated in his affidavit that during the spring of 1944, hazing, humiliation, intimidation and degradation became very overbearing. YAMAZAKI was one of the main perpetrators, among other guards. These guards kept all prisoners of war in a constant nervous and strained condition. They frequently not only struck prisoners of war with their fists and clubs but also forced them to assume unnatural positions for a long period of time. Some of these positions were the "Ofuna Crouch" (previously defined); another position was the "push-up" attitude wherein the victim supported his weight by placing his body in a horizontal position with only his hands and toes touching the floor and his back remaining in a straight line, almost horizontal. If the victim relaxed and tried to regain some sort of comfortable pose, he would be kicked or struck with the guard's club. (Exhibit 5, p 3). YAMAZAKI, among others told him that Capt. SANEMATSU, a member of the Intelligence division ordered various beatings of the

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prisoners of war to take place, subsequent to his questioning. These orders were normally given to IIDA verbally. (Exhibit 5, p 9).

KALBERG, in Exhibit 9, page 2, identified YAMAZAKI as one of the meanest guards during his stay in Ofuna Camp (from 5 September 1943 to 10 July 1944). YAMAZAKI loved to slug the prisoners. In Exhibit 10, Lieutenant Charles KAUFMAN, AAF, stated that he was at Ofuna Prisoner of War Camp from 12 May 1944 to 5 April 1945. YAMAZAKI, a guard, was cruel and free in the use of clubs and fists. Around June or July 1944 he severely slugged a POW named Lt. Glenn McCONNELL.

G. R. LEMPRIERE, former officer in the RAAF, stated that he was confined at Ofuna Interrogation Camp from August 1942 until December 1944, and that YAMAZAKI was one of the guards who were especially brutal. (Ex. 11, p 2).

The Japanese guard YAMAZAKI, nicknamed "Fatstuff", frequently got so mad he would go around slugging all of the prisoners within his reach, and would call special prisoners out and slug them in the face for no reason at all. (Ex. 16, p 1).

In Exhibit 21, W. F. WHITEMORE (USN) stated that he was at the Ofuna Interrogation Center from 14 October 1943 to 1 October 1944. He knew YAMAZAKI by name and by such nicknames as "Little Fatty". About June 1944, "Little Fatty" slugged him in the face four or five times for going to the latrine without permission. At different times, YAMAZAKI beat him and other prisoners with his fists and on several occasions with a baseball bat.

As to Specification 1 (SHINODA): In Exhibit 5, page 2, John A. FITZGERALD stated that in July 1943, J. S. Knutson was severely beaten by SHINODA for taking some rice from the kitchen. He was struck 27 times with a club the size of a ball bat. This was witnessed by all of the POWs.

As to Specification 2 (SHINODA): In Exhibit 5, page 3, FITZGERALD states that during the summer of 1943, a new concrete walk was being constructed. SHINODA AND HIRABAYASHI supervised the mixing of concrete, which was done with shovels. They turned this work into a form of torture in that Lt. WHITING, Lt. HARDY, and he were not permitted any relief at the time other prisoners were relieved on the shovels. These two Japanese took great delight in directing their attention toward both WHITING AND HARDY in particular, who were struck several times with a shovel because they could not keep up with the fresher men turning the concrete.

As to Specification 3 (SHINODA): A. L. MAHER in Exhibit 12, paragraph 37, states that Lieutenant Carlton H. CLARK, U.S.N., arrived in the camp in October 1942. Sometime after that he was ordered to work in the kitchen. This was hard work. The hours were from 4:30 a.m. to 6 p.m., with about an hour off in the afternoon. CLARK had always had trouble with his back. He complained about it often to deponent. After many months in the kitchen, he decided that he had to stop kitchen work. One morning, in the summer of 1943, CLARK failed to get up and go to work in the kitchen. He was reported to "Number 2 Gocho", a petty officer named SHINODA. CLARK was accused of being lazy and insubordinate. SHINODA himself administered the beating, striking CLARK about 20 times across the buttocks and back with the usual club. In Exhibit 14, MAHER repeats that SHINODA personally clubbed Lt. CLARK. He further states that he witnessed the beating and acted as interpreter between SHINODA and the prisoners. SHINODA was a typical mean, vicious and sadistic Japanese.

As to Specification 1 (HIRABAYASHI): See Specification 2 (SHINODA).

As to Specification 2 (HIRABAYASHI): FITZGERALD, in Exhibit 5, says that there was a daily scrubbing of the deck (corridors) with mops having no handles. This necessitated bending over, grasping the mop and running up and down the passageway of the buildings. It frequently lasted half an hour and when anyone fell down from exhaustion or slipped, they would be struck across the back or legs with a club. HIRABAYASHI and another guard were the most frequent

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perpetrators during 1943, with fists and clubs (Page 2). Murray GLASSER, an American POW confined at Ofuna from approximately November 1942 to November 1943, stated in part as follows: One of the chief guards who had a mania for giving severe beatings with a pick handle, bamboo club or anything handy, was a seaman by the name of "Hirabayashii". He was short in stature, although stocky, and had many silver teeth, which is peculiar since most capped Japanese teeth are capped with gold. One form of punishment that he particularly delighted in was to exercise the prisoners, usually by trotting around the compound until some dropped from exhaustion. These prisoners would be beaten until they decided that they would rather try to continue running. Another exercise which we were required to do, with the same result if we could not continue, was the Japanese equivalent of our push-ups. (Ex. 6, p 1).

One affiant, questioned as to which guards beat him during his stay at Ofuna (about 1 May 1943 to about 15 March 1944), stated that "Hirabaya" was the worst. He had a cleft on back of his head which began at the crown and ran down to his neck. He left Ofuna about November 1943 (Exhibit 7, p 5). (HIRABAYASHI's head was examined by the Commission: R. 46)

G. R. LEMPRIERE, former officer in the RAAF, who was confined at Ofuna Interrogation Camp from August 1942 to December 1944, stated that HIRABAYASHI administered intensive punishment to one Lt. GIBSON of the AIF. HIRABAYASHI was one of the especially brutal guards who on many occasions administered brutal punishment without reason (Exhibit 11). A. L. MAHER stated that perhaps the meanest guard in the camp was HIRABAYASHI. He was in the camp from spring 1942 to December 1942 and from February 1943 to summer of 1943. He never once relented in his harassing of prisoners with or without justification. He was a tireless driver who worked the POWs with little rest and who was never satisfied. In November 1942, while building a concrete water hole, HIRABAYASHI accused Ensign COULTER of loafing and struck him in the face with his fists until he bled. It was unprovoked (Exhibit 12, paragraph 39). About March 1943, HIRABAYASHI accused two POWs of lying and forced them to lie in the "push-up" position, on the cold ground, for about an hour. In April 1942 he forced three POWs to stand at attention for three hours for following the orders of the camp petty officer instead of his (Exhibit 12, paragraph 40). HIRABAYASHI worked the prisoners to exhaustion and struck them with club or fists without provocation. It was an exceptional four hour watch when this guard did <u>not</u> strike a prisoner (Exhibit 13). HIRABAYASHI was directly responsible for many beatings (Exhibit 17, p 2).

b. <u>For the Defense:</u>

The accused, Kiichi YAMAZAKI, after being warned of his rights took the witness stand and testified under oath in his own behalf (R. 2, 34). He was a farmer before he entered the navy, where he trained for three years.

As to Boyington (Specification 1): Around the middle of June, I was CQ under head guard HIRAYAMA. I was making the rounds of Number 1 KU barracks and noticed smoke coming from the latrine. This was contrary to the time for smoking according to regulations. BOYINGTON came from the latrine but would not admit he was smoking. I inspected the latrine he came from and saw smoke and a cigarette butt on the floor. After that he admitted smoking. I reported the incident to Hirayama, who ordered me to beat BOYINGTON. I took him to the parade ground behind Number 2 Barrack and with a stick struck him twice in the buttocks. Pfc. OTAKE was there too and struck BOYINGTON three times with the stick. At that time, I felt sorry for Boyington so I asked OTAKE to stop. OTAKE then drew a circle and had BOYINGTON stand in the center. After he stood there five or ten minutes, I told him to return to the barracks. The POW mess call (11:45) had not yet sounded; neither did the guards on duty eat their 11:30 meal (R. 34). After that I went to BOYINGTON's room because I felt sorry for him and gave him some tobacco. Thereafter, BOYINGTON and I were friendly. I gave him tobacco several times thereafter. I told him not to smoke again in the latrine. I did not hit BOYINGTON 20 times as stated by Col. WALKER in his affidavit (Exhibit 20) nor did I and OTAKE strike him 8 times as stated by Commander FITZGERALD (Exhibit 5, p 4). I believe BOYINGTON knew about the smoking regulations (R. 35).

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As to KALBERG (Specification 2) I don't recall the exact date. He was in charge of the bathhouse. The head guard was IWABUCHI. Since it was a fine day, he ordered those working in the kitchen etc. to do some calisthenics. I was the Number 2 Guard that day. During the calisthenics KALBERG was loafing so I cautioned him (R. 35). He continued to loaf so I took him behind Number 3 KU Barrack and struck him twice in the cheek. Head Guard IWABUCHI had instructed me to take action against POWs who loafed during calisthenics. I beat KALBERG because I was only a Pfc and followed the orders of my superior with absolute obedience. It is not true as stated in the CLARK Affidavit (Exhibit 3, p 2) that the senior petty officer made me release KALBERG and that about ten minutes later I got KALBERG behind the kitchen and slugged him several times (R. 36). I speak only two or three words in English. SUGIMOTO, a guard, was at Ofuna the same or part of the time that I was. He could speak more English than I. SUGIMOTO was taller than I and about the same age (R. 38). In the navy I was beaten with clubs bigger than the one I used on BOYINGTON. The one I used on him was about two inches in diameter. When I hit him his hands were raised and his feet spread apart (R. 39).

The accused denied all other beatings or knowledge or remembrance of same.

Masayoshi MURATA (a witness): I have been tried by a Commission and I am confined in Sugamo. I was at Ofuna from 27 May 1944 to 10 November 1944 (R. 42). I knew YAMAZAKI. We were at Ofuna at about the same time. The guard SUGIMOTO was a little taller than YAMAZAKI but had a similar build (R. 43).

Mitsugi IWABUCHI (a witness): I was a senior petty officer in the navy and was at Ofuna POW Camp from 7 March 1944 (R. 44) to 10 February 1945. While there, I was Gocho Number 1 (senior). I know former guards YAMAZAKI and SUGIMOTO. They were both stout and well built. SUGIMOTO was slightly taller. Both had chubby faces (R. 45).

The accused, Masajiro HIRABAYASHI, after being warned of his rights took the witness stand and testified under oath in his own behalf (R. 3, 46). I was in the navy and assigned to Ofuna POW Camp from September 1942 to November or December 1942 and again from February or March 1943 to September 1943. I do not have a cleft from the crown of my head to my neck. (Examination by the Commission disclosed a depression in the upper, back part of his skull about three (3) inches long extending to one and a half ($1\frac{1}{2}$) inches above the ears). I am 28 years old (R. 46).

As to Specification 1 (involving Fitzgerald, Whiting and Hardy), we were building a concrete walk and some prisoners were loafing. When it came time to change shifts I made them work on but never struck them with a shovel.

As to Specification 2 (omnibus specification), we were working on a reserve water hole. COLTER was talking and loafing. I cautioned him several times but he continued so I struck him. He was not bleeding (R. 47). I struck him once. As to beating nine prisoners in November 1942: I struck 4 prisoners on orders of Head Guard FUJIWARA. Kampan soji (cleaning the corridors) was done every morning on orders of the CQ head guard. I have four silver capped teeth in front and four in back. Guards OTSUKI and KIZAWA had many silver fillings. There was a time when I received orders to strike POWs in which it was stated that it was an order from Captain SANEMATSU.

As to Sergeant LUTZ: He broke a saw, then hid it, so I beat him. He had lied that he didn't know about it (R. 49). I struck him in the cheek twice on orders of Head Guard TERAI. (The Commission examined the accused's teeth but did not note the result in the record: R. 51).

The accused, Shuichi SHINODA, after being warned of his rights took the witness stand and testified under oath in his own behalf. (R. 3, 51). I arrived at Ofuna 28 December 1942. I was Gocho Number 1 until I left.

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As to KNUTSON (Specification 1): In July 1943, the CQ guard reported to me that "KNUDSEN" had been caught stealing rice. I ordered YAMAHATA, the CQ guard, to assemble the POWs in the parade ground. I told the POWs about it, then struck "KNUDSEN" three or four times with a stick and cautioned the men (R 52). The accused denied any other beatings (R 53). One day camp commander IIDA told me to have the guard strike two or three POWs because they had not answered questions. He further stated this was an order from Captain SANEMATSU of the General Staff (R 54). SASAKI did not give me an order to beat the prisoners of war after he had interrogated them (R 54).

4. Opinion:

The commission was constituted by proper authority and had jurisdiction over the accused and of the offenses charged. There is no reason to doubt the sanity of the accused at the time of the offenses charged, nor was the issue raised. All of the accused were advised of their rights prior to testifying.

The remarks of the Law-Member (R 54) that the accused (SHINODA) realized when he took the stand that he might be subjected to cross-examination on other than pertinent matters were erroneous but harmless, since the accused denied SASAKI had ordered him to beat prisoners. Paragraph 5a (1) of Letter, SCAP, dated 5 December 1945 restricts the evidence to the issues raised, excluding irrelevant issues or evidence.

The motion of the defense for a finding of not guilty of Specifications 3, 4, 5, and 6 as to YAMAZAKI; Specifications 1, 2, and 3 as to SHINODA; and Specifications 1 and 2 as to HIRABAYASHI (R 29, et seq), on the ground of insufficient corroboration, was properly denied. It has been held that one affidavit may be sufficient to support a conviction. (KATSURA - No. 59, TAKAHASHI, et al-No. 91, Page 18).

The evidence amply supports the charges. Though the element of "superior orders" was raised by the defense the proof shows that all three accused were vicious and sadistic on their own initiative. Giving due allowance to the fact that beatings were customary in the Japanese Navy, the sentences were commensurate with the crimes. HIRABAYASHI deserved a sentence of four years confinement though there are only two specifications against him, because of the brutal nature of his conduct, as attested to by several of the former prisoners (Exhibits 5, 7, 11, 12 and 13). The punishment of the prisoners was aggravated by the nature of the camp (Interrogation) where neither conversation nor correspondence was permitted. There is little doubt but what the accused were guilty of the offenses charged, according to the findings of the commission. It is to be noted that several of the beatings were admitted by the accused. There were no recommendations for clemency by any members of the commission.

5. Recommendations:

The sentences should be approved as to all of the accused.

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Specifications 1 and 6 against YAMAZAKI and Specification 2 against SHINODA state "31 September". Since that month has only 30 days, the findings should be molded accordingly.

YAMAZAKI was sentenced to confinement at hard labor for six (6) years. The accused was confined 17 September 1946, went to trial 20 February 1948 and was sentenced 26 February 1948. In compliance with established policy it is recommended that fourteen and one-half ($14\frac{1}{2}$) months of the confinement at hard labor imposed be remitted.

SHINODA was sentenced to confinement at hard labor for two (2) years. The accused was confined 16 September 1946, went to trial 20 February 1948 and was sentenced 26 February 1948. In compliance with established policy, it is recommended that fourteen and one-half ($14\frac{1}{2}$) months of the confinement at hard labor imposed be remitted.

HIRABAYASHI was sentenced to confinement at hard labor for four (4) years. The accused was confined 6 August 1946, went to trial 20 February 1948 and was sentenced 26 February 1948. In compliance with established policy, it is recommended that fifteen and one-half ($15\frac{1}{2}$) months of the confinement at hard labor imposed be remitted.

6. Action:

A form of action designed to carry the above recommendations into effect is attached.

CYRIL E. MORRISON
Reviewer
Judge Advocate Section

C.M.

I concur in general. It is noted that the sentences as to Yamazaki and Shinoda are inadequate by comparison with those of other commissions in cases involving similar facts. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowance should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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